

Purpose and Scope

The federal government, over a number of years, has passed numerous civil rights laws protecting individuals from discrimination and harassment based on race, color, sex, religion, creed, age, national origin, marital status, disability status, and veterans status.

Even before the federal government took this action, the Washington State Legislature passed RCW 49.60, the Washington State Law Against Discrimination. Over the years, this law has been amended to include protection against discrimination and harassment based on race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a disabled person. Washington also has Executive Order 93-07 protecting persons from discrimination or harassment based on sexual orientation.

The Washington State Department of Transportation (WSDOT) prohibits any type of inappropriate behavior that could be considered harassment. However, this chapter is limited to the unlawful forms of harassment (i.e., sexual, racial, ethnic, religious, etc.) prohibited by the various civil rights laws outlined at the end of this chapter.

The department is committed to creating and maintaining a work environment in which all employees are treated respectfully and are free from discrimination and harassment due to race, creed, religion, color, national origin, age, sex, sexual orientation, marital status, status as a disabled or Vietnam-era veteran, or the presence of any form of disability. To this end, all employees are expected to refrain from discriminatory or harassing behavior in the workplace and at department-sponsored events, and to comply with department rules and procedures.

The department procedure for reporting and resolving discrimination or harassment complaints based on protected status is designed to encourage employees to report incidents as soon as they occur. The Washington State Department of Transportation (WSDOT) Office of Equal Opportunity (OEO) has been given the authority to conduct all investigations into alleged violations of civil rights. All complaints will be promptly, thoroughly, and respectfully handled. Complaints and resolutions will be handled as discretely as possible. Moreover, retaliation will not be tolerated against any person who reports alleged violations of discrimination or harassment or participates in a subsequent investigation and resolution.

When the appointing authority makes a determination that discrimination or harassment has occurred based on a person's protected group status, appropriate corrective action will be taken. Corrective action is determined by the seriousness of the infraction, the number, nature, and seriousness of previous infractions and the severity of previous corrective actions imposed. Please refer to the WSDOT *Human Resource Desk Manual*, M 3009.00, "Corrective Action" chapter for more detailed information.

Authority of the Office of Equal Opportunity

By authority of the Secretary of Transportation, for the purpose of fulfilling official duties, the Director of OEO and associated staff are authorized to have free and unrestricted access to all internal records, including but not limited to financial, personnel, and administrative documents, equipment, facilities, and employees, for the purpose of conducting investigations.

In addition, representatives of the office will have access to all applicable records of parties having contractual agreements for providing goods or services, or who are the recipient of funding, either direct or indirectly provided by the agency, subject to contractual and statutory language covering those activities, for the purposes of conducting investigations.

Responsibilities

WSDOT's OEO, acting on behalf of the Secretary of Transportation, is charged with a role as consultant, educator, information resource and policy analyst advisor, as well as maintaining a program of internal and external civil rights.

In fulfilling these responsibilities, the Director of OEO is responsible for the development of procedures necessary to carry out this complete program, including advising executive management of their responsibilities and duties when responding to the various investigations, evaluations, consultations, and analyses conducted by the office.

It is the responsibility of the Director of OEO to ensure that appropriate rules and procedures are established, so as to comply with Governor Locke's Executive Order 98-02, Training and Protocols for State Investigators.

It is the responsibility of the Director of OEO to ensure that all Reports of Investigations (ROI) conform to the highest standards of ethical conduct.

It is the responsibility of the Director of OEO to ensure all investigations will be conducted impartially and free of any impediment or obstruction by any employee of this agency.

It is the responsibility of the Director of OEO to ensure all complaints and/or allegations made will be assigned a case number, so as to provide a system of accountability and tractability.

It is the responsibility of the investigator to submit an independent and impartial report with respect to the established fact of the case.

It is the responsibility of the investigator to conduct all investigations in keeping with the highest standards of ethical behavior.

The Director of OEO can designate these responsibilities to the Diversity Program Administrator.

Definitions

Investigation is defined as the process used to gather the facts to support or disprove a complaint or report of an alleged incident. The investigation seeks to determine or report the truth and all the facts, both favorable and unfavorable, in order that management will have all the facts available to them, in rendering a fair decision.

Investigator is defined as a state employee or contractor acting as an agent of the state whose duties require him or her to respond to complaints and allegations, in order to determine the following:

- First, determine the elements of the reported incident.
- Second, seek to gather information concerning those elements.
- Third, prepare a written report of those findings to the Diversity Program Administrator.

Principles

WSDOT recognizes the following principles:

- First, it is wrong to bring the power of the state down upon any person in a civil enforcement action unless that action is based upon a proper investigation of the pertinent facts.
- Second, all who investigate should be trained to investigate.
- Third, investigators should know the scope of their authority and stay within it.
- Fourth, investigators should know what matters lie beyond their authority, and when, how and to whom those matters should be referred.
- Fifth, investigators should know how to competently gather and preserve evidence of wrongdoing.
- Sixth, investigators should know and respect the rights of those they investigate and those from whom they seek to gather information.
- Seventh, as public servants, state agency investigators have a duty to maintain the highest standards of ethics and respect for the public.
- Eighth, no course of training is a substitute for sound management.
- Ninth, civil investigators perform an essential service to the people of the state. They comprise a profession that ought to be recognized and appreciated.

Department Directed Inquiry

In order to provide and maintain a workplace free from discrimination or harassment, the department may pursue an inquiry into allegations of discrimination, harassment, or violation of policy or rules with or without authorization of the complainant. When in doubt, the supervisor should contact OEO for assistance.

Complaint Procedures

If you believe you have been subjected to discrimination or harassment due to your race, religion, color, creed, national origin, age, sex, sexual orientation, marital status, status as a disabled or Vietnam-era veteran, or the presence of any form of disability, you have numerous options. The quickest, and normally most effective, option is to simply tell the offender about his or her behavior, explain what they are doing that disturbs you, and ask that this behavior stop. This may be done either in person or in writing. Complaints should be submitted by the complainant as soon as possible after the alleged violation.

If you do not want to confront the offender, if you have confronted the offender and the offensive behavior has not stopped, or if you believe your complaint has, or will, result in retaliation, you may use the informal or formal process described below. If you believe the discrimination or harassment is in violation of your civil rights, you may also file a complaint with the Washington State Human Rights Commission, the US Equal Employment Opportunity Commission, or with the courts.

In order to ensure a fair, equitable, and complete investigation occurs with a minimum impact on employee morale and in order to help reduce the stress caused by such an investigation, all interviews will be conducted under the guidelines provided at Appendix 6-1 to this document.

Additionally, the “Investigative Considerations” provided at Appendix 6-2 must be followed at all times by the investigator assigned to each case.

Intake Procedures

Before deciding which avenue to use to resolve a complaint, the Complainant must have a clear understanding of the issues. After this understanding has been developed, a decision can be made as to which approach is needed to resolve the complaint.

Action By	Action
Complainant	

1. Discuss complaint with your OEO Human Resource Consultant, or with a supervisor in your chain of command.

Human Resource Consultant

2. Upon receipt of the complaint, meet with the complainant immediately. Listen to the complainant, clarify issues, explain options. Follow outline listed on Interview Checklist (Attachment 1, DOT OEO Form 2-001).
3. Ensure the complainant understands that WSDOT takes all complaints seriously.
4. Give the complainant a copy of OEO complaint procedures. Explain complainant's rights and responsibilities (Attachment 2, DOT Form 731-015EF).
5. Ensure the complainant understands that retaliation against any person making a complaint is prohibited and should be reported immediately.
6. Explain to the complainant that any disciplinary actions to be taken will be determined by the appointing authority and that OEO is not involved in this process.
7. Complete Customer Contact Report (Attachment 3, DOT OEO Form 2-002).

8. Evaluate the complainant's information; discuss whether the complainant wants an informal inquiry or formal investigation; determine what should be recommended to the Diversity Program Administrator.
9. Determine if there are any short-term special needs or if any short-term arrangements should be made to provide relief to the complainant.
10. Submit Customer Contact Form to DPA for review.

Diversity Programs Administrator

11. Review Customer Contact Form, determine jurisdiction, approve or reject, send to Administrative Assistant for case number, if needed.

Administrative Assistant

12. Assign case number, prepare file folder, enter case into data base, provide HRC a copy of the approved customer contact form for action.

Informal Inquiry Procedures

Many people who believe they have experienced discrimination or harassment of some form or another simply want it to end. For this reason, an informal process has been established to meet this need. You are not required to use this process as a prerequisite to exercising your other options.

The informal inquiry will be handled as discretely as possible. However, no guarantee of confidentiality can be made.

<i>Action By</i>	<i>Action</i>
Human Resource Consultant	

1. Ensure the complainant understands the need to keep the matter confidential to the fullest extent possible in order to preserve all parties' privacy.
2. Consider discussing issue with complainant's supervisor on a case-by-case basis.
3. With the complainant's permission, talk to others about options for resolution; provide the complainant with reference information about available resources to deal with the complaint; help the complainant determine who can best address their concerns and needs.
4. Assist complainant in resolving complaint.
5. **Document** all actions taken including resolution.
6. Complete and submit Customer Contact Form to DPA for review.

Complainant

7. Determine whether further action will be needed or if suggested resolution is satisfactory.

Human Resource Consultant

8. If further action is needed, assist with referring the situation to the appropriate process.
9. When a satisfactory resolution is found, follow-up with complainant as appropriate to ensure no reoccurrence.
10. Upon conclusion, return the original case file to ICRB for storage and archiving.

Formal Investigation/DDI Procedures

Sometimes alleged sexual harassment or discriminatory behavior is so severe that a complainant can request a formal investigation or management may decide that an agency-directed investigation is required. As with informal inquiries, formal investigations will be handled as discretely as possible. However, no guarantee of confidentiality can be made.

Action By	Action
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Human Resource Consultant

1. Prepare Pre-Investigative Plan (Attachment 4, DOT OEO Form 2-003).
2. Meet with complainant's appointing authority to explain situation. Review need for separation of parties if appropriate. Inform appointing authority of the steps in the investigation, who is assigned to investigate, who in ICRB will serve as the reviewing manager, and the expected timetable. Review procedures and provide consultation.
3. Send Complaint Notification Letters to Complainant and Respondent via Certified Mail (Attachments 5 and 6).
4. Meet individually with complainant, respondent, and witnesses. Ensure all parties understand the following:
 - a. WSDOT takes all complaints seriously.
 - b. The procedures that will be followed during the course of the investigation.
 - c. Retaliation against any person making a complaint is prohibited and should be reported immediately.
 - d. The need to keep the matter confidential to the fullest extent possible in order to preserve the privacy of all parties.
 - e. The investigation and any actions from the investigation will be handled on a need-to-know basis.

- f. OEO and the complainant's appointing authority are available for consultation on items of concern (outside the allegations of the investigation) with any of the parties involved.
5. Conduct an objective and impartial investigation. This includes collecting written statements and exhibits from respondent and witnesses, conducting follow-up interviews for clarification, and gathering responses to pertinent questions.
6. When an investigation will exceed the due date, report status of complainant, respondent, and appointing authority. Provide weekly update to DPA.
7. Prepare investigative report based on evidence gathered during investigation (Attachment 7).
8. Submit investigative report to the DPA for review and further disposition. The report should be submitted within 30 days of the completion of the investigation. In extenuating circumstances, reasonable extensions of time may be needed to complete the investigation and report. Extensions need to be agreed upon by the investigator and the DPA and communicated to all parties (Attachment 8).

Diversity Programs Administrator

9. Review investigative report and ensure the investigation was objective, impartial, and complete.
10. Prepare written conclusions. Return to HRC for outbriefing of appointing authority, complainant, and respondent.

Human Resource Consultant

11. Meet with the appointing authority to review case and recommended actions (i.e., separating parties, etc.). Provide consultation on resolution of the complaint.
12. Send Closing Letters to Complainant and Respondent via Certified Mail (Attachments 9 and 10). Include Request for Appeal Hearing form (Attachment 11, DOT Form 731-017EF).
13. Collect all materials relevant to investigation for inclusion in secured file. Return complete file to administrative assistant for storage and archiving.

Retaliation Prohibited

Retaliatory action of any kind against any individual participating in the filing and investigation of a complaint of discrimination, harassment, or violation of policy or rules is prohibited and will be treated in the same manner as complaints of discrimination or harassment.

See Also

DOT Executive Order E 1014.00, Equal Employment Opportunity, Affirmative Action, and Freedom from Discrimination and Sexual Harassment

DOT Policy Statement P 2007.00, Equal Opportunity and Affirmative Action

DOT Policy Statement P 2008.00, Freedom from Discrimination

DOT Policy Statement P 2009.00, Freedom from Sexual Harassment

Titles VI and VII of the Civil Rights Act of 1964, as amended

Section 504 of the Rehabilitation Act of 1973, as amended

Age Discrimination Claim Assistance Act of 1988, as amended

Age Discrimination in Employment Act of 1967, as amended

Americans With Disabilities Act of 1990, as amended

Washington State Law Against Discrimination, RCW 49.60, as amended

Washington State Executive Orders 89-01 (Sexual Harassment); 96-04 (Reasonable Accommodation); and 93-07 (Affirmative Action)

Vietnam-era Veterans Readjustment Act of 1974, as amended

Washington State Executive Order 98-02, Training and Protocols for State Investigators

P65:DP/EODM

Attachment 1 Interview Checklist

<p>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION OFFICE OF EQUAL OPPORTUNITY</p> <p>INTERVIEW CHECKLIST</p>		<div style="border: 1px solid black; padding: 2px; display: inline-block;">Case #:</div>
<p>NOTE: Follow the guidelines in Chapter 2 of the <i>Equal Opportunity Desk Manual</i> & refer to the Customer Contact Report for relevant information not contained in this form.</p>		
<p>NAME (Complainant, Respondent, or Witness): _____</p>		
<p><u>INTERVIEWEE INFORMED OF:</u></p> <p>_____ Right to representation.</p> <p>_____ Voluntary nature of participation.</p> <p>_____ Interviewee's rights and responsibilities.</p> <p>_____ Applicable policies and procedures.</p> <p>_____ Early resolution option (Complainant / Respondent).</p> <p>_____ Public records request process and redacting process.</p> <p>_____ Copy of statement provided (or will be provided by: _____).</p>		
<p><u>INVESTIGATOR EXPLAINED / CLARIFIED:</u></p> <p>_____ Employer commitment to resolution.</p> <p>_____ All relevant statements are "on the record."</p> <p>_____ His / her problem in own words.</p> <p>_____ Issues, bases, and causal relationships of problems.</p> <p>_____ Equal employment opportunity (OEO) and non-OEO issues.</p> <p>_____ Complainant's resolution issues.</p> <p>_____ Next procedural steps and timelines.</p> <p>_____ Investigator's business card provided.</p>		
<p>ACKNOWLEDGEMENT</p>		
<p>INVESTIGATOR</p> <p>_____ Signature</p> <p>_____ Date</p>	<p>INTERVIEWEE</p> <p>_____ Signature</p> <p>_____ Date</p>	
<p>DOT OEO Form 2-001 Revised: 11/99</p>		

Attachment 2 Complainant's Rights and Responsibilities



Washington State
Department of Transportation

Complainant's Rights and Responsibilities

OEO Office Use Only

Case #

NOTE: Persons with disabilities may request this information be prepared and supplied in alternate formats by calling 360-705-7095. Persons with hearing impairments may call 1-800-833-6388 (Washington State Telecommunications Relay Service), Tele-Braille at 1-800-833-6385, or Voice at 1-800-833-6384, and ask to be connected to 360-705-7097.

You Have the Right:

1. To file a complaint with the Washington State Human Rights Commission (if it is within their jurisdiction) within 180 days of the alleged incident(s).
2. To file a complaint with the Equal Employment Opportunity Commission (if it is within their jurisdiction) within 300 days of the alleged incident(s).
3. To file a complaint with the United States Department of Justice.
4. To sue privately in state or federal court if you meet statutory time and jurisdictional requirements.
5. To file any union action that may be available.
6. To consult with an attorney at any time.
7. To have union representation present if applicable.

Note: You do not have to wait for the Washington State Department of Transportation (WSDOT) to complete your case to pursue any of the above options.

8. To appeal the investigative results of the Office of Equal Opportunity (OEO) to the Equal Opportunity Committee (EOC) within 15 days of receipt of notification by registered mail.

You Have the Responsibility:

1. To cooperate fully in the investigation.
2. To provide information requested.
3. To keep the OEO advised of your current address and telephone number and to let the OEO know about any prolonged absences.
4. A duty not to interfere with the investigation including, but not limited to, discussing the matter with possible witnesses regarding issues affecting the investigation.

Referral Information

WSDOT Office of Equal Opportunity
310 Maple Park SE, Olympia, WA 98504-7314
Phone: 360-705-7090

Washington State Human Rights Commission
711 Capitol Way, Suite 402, Olympia, WA 98504-2490
Phone: 360-753-6770

Washington State Human Rights Commission
1511 3rd Street, Seattle, WA 98101
Phone: 206-464-6500

Equal Employment Opportunity Commission
909 First Avenue, Suite 400, Seattle WA 98104
Phone: 206-220-6882 / 1-800-669-4000

(For Title II and Section 504 Complaints)
Department of Justice, Civil Rights Section
Box 66738, Washington, DC 20035-6738

(For Title II, Title VI & Section 504 Complaints)
Federal Highway Administration, 711 S. Capitol Way
(Washington State Division Office)
Olympia, WA 98501-1284
Phone: 360-534-9325

I have read or had explained to me the above information. I have received a copy of this document.

I have explained the above information to the complainant.

Complainant's Signature

Date

OEO Human Resources
Consultant/Designee

Date

DOT Form 731-015 EF
3/2001

Attachment 3 Customer Contact Report

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION OFFICE OF EQUAL OPPORTUNITY			
CUSTOMER CONTACT REPORT			
			CASE #:
			DUE DATE:
CHECK THOSE THAT APPLY			
<input type="checkbox"/> TITLE VI	<input type="checkbox"/> Disability	<input type="checkbox"/> Disabled Veteran	<input type="checkbox"/> Marital Status
<input type="checkbox"/> Race / Color	<input type="checkbox"/> Sex (Includes Sexual Harassment)	<input type="checkbox"/> Vietnam Era Veteran	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Age		<input type="checkbox"/> National Origin	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Creed / Religion			
NOTE: Fax this form to the OSC OEO the following business day.			
Received By	Date / Time	Location	Report Received <input type="checkbox"/> E-mail <input type="checkbox"/> Mail <input type="checkbox"/> in Person <input type="checkbox"/> Phone
Name of Complainant	Job Title	Region / Organization	
Complete Home Address			Phone Number ()
Name of Respondent	Job Title	Region / Organization	
Complete Home Address (if known)			Phone No. (if known) ()
Date and Time of Allegation	Location of Allegation	Summary of Allegation(s)	
Use Supplemental Pages A and B, if appropriate.			
(OEO) HUMAN RESOURCES CONSULTANT TAKING REPORT			
COMMENTS			
<input type="checkbox"/> Appointing Authority Notified			
RECOMMENDED PROCESS: <input type="checkbox"/> Formal <input type="checkbox"/> Dept Directed Inquiry <input type="checkbox"/> Informal <input type="checkbox"/> Referred to: _____ (Not within the scope of OEO's authority)			
DIVERSITY PROGRAMS ADMINISTRATOR'S (DPA) REVIEW			
COMMENTS			
ASSIGNED INVESTIGATOR: _____			
PROCESS: <input type="checkbox"/> Formal <input type="checkbox"/> Dept Directed Inquiry <input type="checkbox"/> Informal <input type="checkbox"/> Referred to: _____ (Not within the scope of OEO's authority)			
DIVERSITY PROGRAMS ADMINISTRATOR'S SIGNATURE _____ DATE _____			
INVESTIGATION STATUS			
<input type="checkbox"/> Under Investigation DATE _____	<input type="checkbox"/> Report Submitted to DPA DATE _____	<input type="checkbox"/> All Parties Out-briefed DATE _____	
DATE CLOSED _____ AND STATUS:			
<input type="checkbox"/> Administrative Closure <input type="checkbox"/> Policy Violation <input type="checkbox"/> Early Resolution Closure <input type="checkbox"/> _____			
DATE ORIGINAL INVESTIGATIVE FILE RECEIVED AT OSC OEO: _____			

OEO Form 2-002
Revised: 12/99

Page 1 of ____ pages

Attachment 3 Customer Contact Report – Supplemental Page B

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF EQUAL OPPORTUNITY

CUSTOMER CONTACT REPORT

CASE #:

SUPPLEMENTAL PAGE B - WITNESS(ES)

Name of Complainant: _____ / Date: _____

Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		
Name	Organization / Department	Phone Number
Information They Can Provide		

DOT OEO Form 2-002 Sup B
Revised: 9/99

Page ____ of ____ pages

Attachment 4 Pre-Investigation Plan

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF EQUAL OPPORTUNITY

PRE-INVESTIGATION PLAN

Case #:

NOTE: Follow the guidelines in Chapter 6 of the Equal Opportunity Desk Manual, and refer to the Customer Contact Report and the Title VII Discrimination Complaint form for relevant information not contained in this document.

COMPLAINANT: _____ RESPONDENT: _____
Phone Number: _____ Phone Number: _____
Work Schedule: _____ Work Schedule: _____

◆ DATE COMPLAINT FILED: _____ TARGET COMPLETION DATE: _____

◆ HARM: _____

◆ BASIS: _____

◆ AGENCY WHERE COMPLAINT WAS FILED: _____

◆ SUMMARY OF COMPLAINANT'S ALLEGATIONS: _____

◆ RESPONDENT'S POSITION / RESPONSE: _____

◆ WHAT IS THE FULL POTENTIAL REMEDY? _____

◆ ADDITIONAL WITNESSES:

Name	Phone Number	Work Schedule
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

◆ WHAT RECORDS WILL ESTABLISH THE FACTS?

Document Title	Source	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____

◆ ADDITIONAL COMMENTS: _____

DOT OEO Form 2-003
Revised: 11/99

Attachment 5 Complaint Notification Letter to Complainant

LETTERHEAD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Title/Complainant
Street Address
City, State ZIP

Re: Case No.

Dear Title/Complainant:

This is to acknowledge receipt of your complaint by the (office) of the (agency).

This office is charged with conducting fair and impartial investigations into allegations of civil rights violations. We are also charged with attempting to resolve issues by mutual agreement of the parties involved prior to beginning a formal investigation.

A copy of your complaint will be forwarded to the responding party(ies) in order to provide the individual(s) with the opportunity to prepare a response. Federal and state laws prohibit the respondent(s) from taking any action against you because you have filed a complaint. If you believe retaliation is occurring, please contact me immediately.

I have assigned (name) as the investigator responsible for this case. (Name) will contact you within the next 10 days to begin the early resolution process. If an early resolution cannot be achieved, an investigation will be initiated. Once the investigation has been completed, you will be notified of the results.

Please note that you also have the right to file a complaint with the Washington State Human Rights Commission within 180 days of the alleged incident(s) or the Equal Employment Opportunity Commission within 300 days of the alleged incident(s).

If you have further concerns or questions, please contact (investigator) at (phone number).

Sincerely,

(Diversity Programs Administrator)
cc: (Investigator)

DOT OEO Letter 2-001
Revised 5/01

Attachment 6 Complaint Notification Letter to Respondent

LETTERHEAD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Title/Respondent
Street Address
City, State ZIP

Re: Case No.

Dear Title/Respondent:

The attached complaint has been filed with the (office) of the (agency).

This office is charged with conducting fair and impartial investigations into allegations of civil rights violations. We are also charged with attempting to resolve issues by mutual agreement of the parties involved prior to beginning a formal investigation.

If you wish to respond to this complaint, we ask that you provide a written response containing any information (including dates, witnesses, documentation) that supports your response by (date).

I have assigned (name) as the investigator responsible for this case. (Name) will contact you within 10 days of receipt of your response to begin the early resolution process. If an early resolution cannot be achieved, an investigation will be initiated. Once the investigation has been completed, you will be notified of the results.

Federal and state laws prohibit you from interfering with, or retaliating against the complainant directly or indirectly because they have filed a complaint or are involved in the complaint process.

If you have further concerns or questions, please contact (investigator) at (phone number).

Sincerely,

(Diversity Programs Administrator)
cc: (Investigator)

DOT OEO Letter 2-002
Revised 5/01

Attachment 7 Final Investigation Report (page 1 of 2)

FINAL INVESTIGATIVE REPORT

Date: February 01, 2001
From: Joe Monday, HRC3
Subject: Formal Investigation
To: (Name) Diversity Program Administrator

Case Number: 1B0012-0000
Type of Case: Sexual harassment
Date Filed: 12/1/2000
Date of Occurrence: November 29, 2000 and previous
Location of Occurrence: On the job - Portland area
Complainant: John Doe
Complaint Job Title: Maintenance Tech II
Investigated By: Joe Monday
Policy Areas Addressed: Chapter 1, OEO Manual - Sexual Harassment

SYNOPSIS:

(The synopsis is a brief overview of the facts and circumstances of the case)

On December 1, 2001, John Doe, Maintenance Tech II, contacted the Office of Equal Opportunity to file allegations concerning sexual harassed by a female coworker with sexually graphic pictures, sexual and cultural jokes, and the use of profanity that affected his ability to perform his job. Mr. Doe alleges this behavior has been going on for two years and that management is aware of it. Mr. Doe further alleges that management has witnessed some of these behaviors and has not taken any measures to stop this behavior.

NARRATIVE:

(The narrative is a chronological summary of information by witnesses and the accused employee(s) critical to the complaint(s)).

An investigation was conducted to examine the following allegations:

1. Mr. Doe alleges that on 11/29/2000, while attending training, Mrs. Jane Smith, Maintenance Tech II, displayed an inappropriate picture of a male model and stated, "I wonder if you look like this guy." Mr. Doe stated this happened in front of several female coworkers. Mr. Doe alleges that he told Mrs. Smith he did not appreciate her comment and she called me a derogatory name.
2. Mr. Doe alleges the practice of telling sexual and/or cultural jokes, and displaying sexually graphic pictures has been going on for years and this behavior has affected his ability to perform his job.

Attachment 7 Final Investigation Report (page 2 of 2)

(Name) DPA
Page 2
February 1, 2001

3. Mr. Doe alleges management has been present when sexual and cultural jokes are said and nothing has been done to stop this behavior.

Allegation #1:

On December 5, 2000, Mrs. Smith denied showing the picture of a male model and did not recall making the alleged statement to Mr. Doe. Mrs. Smith admitted when she came back from a break she noticed that someone had placed a picture of a male model on her chair but that she did not see anything wrong with the picture. She stated she did not know who had put it in her chair.

One witness admitted seeing the picture, but denies bring it to work. None of the witnesses interviewed admitted to bring the picture or having heard the alleged statement made by Mrs. Smith

Allegation #2:

Several witness interviewed admitted that sexual and/or cultural jokes are told in the workplace from time to time but they are harmless and no one has ever complained. Witnesses indicated that Mr. Doe has heard these jokes and he had never indicated that they were offensive or interfered with his job.

Allegation #3:

Several witness interviewed admitted that sexual and/or cultural jokes told were in the presence of a supervisor and they laughed at the jokes. Witnesses indicated management has never told them their behavior is inappropriate for the workplace.

Written by: Joe Monday, HRC3
Assigned Region Date signed: 02/01/01

Approved by: Signature
Diversity Programs Administrator Date signed: 02/08/01

Attachment 8 Extension Letter

LETTERHEAD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Title/Complainant (Respondent or Complainant)
Street Address
City, State ZIP

Re: Case No.

Dear Title/Complainant (Respondent or Complainant):

This is to notify you that due to unforeseen circumstances, (investigator) will be unable to complete the investigation into your complaint within the time prescribed under department policy. Therefore, an extension of (number) days has been granted to the investigator by the Diversity Programs Administrator in order to ensure a full and complete investigation is conducted.

If you have further concerns or questions, please contact (investigator) at (phone number).

Sincerely,

(Diversity Programs Administrator)
cc: (Investigator)

DOT OEO Letter 2-003
Revised 5/01

Attachment 9 Appeal Letter to Complainant

LETTERHEAD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Title/Complainant
Street Address
City, State ZIP

Re: Case No.

Dear Title/Complainant:

On (date), you were provided with a copy of the findings of the investigation conducted by the Office of Equal Opportunity (OEO).

You may appeal a finding of the OEO to the Equal Opportunity Committee. Your appeal must be submitted to the Secretary of Transportation within 15 calendar days of receipt of this letter, using DOT Form 731-017EF. In order for your request for appeal to be heard, you must base the appeal on at least one of the following categories:

- a. All information available was not considered by the investigator;
- b. The finding in the case was a misapplication of department policy;

Please note that this finding and the appeal process in no way abrogates any other rights you may have under federal, state, and local laws.

The Washington State Department of Transportation is committed to providing its employees and the public with a discrimination-free environment.

If you have further concerns or questions, please contact (investigator) at (phone number).

Sincerely,

(Diversity Programs Administrator)
cc: (Investigator)

DOT OEO Letter 2-004
Revised 5/01

Attachment 10 Appeal Letter to Respondent

LETTERHEAD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Title/Respondent
Street Address
City, State ZIP

Re: Case No.

Dear Title/Respondent:

On (date), you were provided with a copy of the findings of the investigation conducted by the Office of Equal Opportunity (OEO).

You may appeal a finding of the OEO to the Equal Opportunity Committee. Your appeal must be submitted to the Secretary of Transportation within 15 calendar days of receipt of this letter, using DOT Form 731-017EF. In order for your request for appeal to be heard, you must base the appeal on at least one of the following categories:

- a. All information available was not considered by the investigator;
- b. The finding in the case was a misapplication of department policy;
- c. The element of "due process" was not provided in accordance with the discrimination complaint procedures outlined in Chapter 6 of the *Equal Opportunity Desk Manual*.

Please note that this finding and the appeal process in no way abrogates any other rights you may have under federal, state, and local laws.

The Washington State Department of Transportation is committed to providing its employees and the public with a discrimination-free environment.

If you have further concerns or questions, please contact (investigator) at (phone number).

Sincerely,

(Diversity Programs Administrator)
cc: (Investigator)

DOT OEO Letter 2-005
Revised 5/01

Attachment 11 Request for Appeal Hearing



Washington State
Department of Transportation

Request for Appeal Hearing

OEO Office Use Only

Case #

NOTE: Persons with disabilities may request this information be prepared and supplied in alternate formats by calling 360-705-7095. Persons with hearing impairments may call 1-800-833-6388 (Washington State Telecommunications Relay Service), Tele-Braille at 1-800-833-6385, or Voice at 1-800-833-6384, and ask to be connected to 360-705-7097.

Name	Job Title	
Home Address	Home Phone	Work Phone

Regarding: _____

- ☐ 1. All information available was not considered. (Please describe what was not considered and why it would affect the outcome):

- ☐ 2. I do not believe this is an appropriate application of Departmental policy and procedures. (Please describe why you believe the conclusion was erroneous):

- ☐ 3. Additional Comments:

Submit this form to the Secretary of Transportation, Transportation Building, PO Box 47316, Olympia, WA 98504-7316.

After review of your request, you will be informed if an appeal hearing is scheduled. At the appeal hearing, you may personally present your concerns to the oversight Equal Opportunity Committee.

Chapter 3 of the Equal Opportunity Desk Manual outlines the appeal hearing process and membership of the Equal Opportunity Committee.

DOT Form 731-017 EF
3/2001

Case #:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

PERSON PROVIDING STATEMENT

Signature
Date

Page ____ of ____ pages

Attachment 14 Terms of Resolution of Complainant

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF EQUAL OPPORTUNITY

Case #:

TERMS OF RESOLUTION OF COMPLAINANT

NOTE: Refer to the Customer Contact Report for relevant information not contained in this form.

COMPLAINANT: _____ RESPONDENT: _____

You are requested to state what terms of remedy you feel will settle your complaint. The Office of Equal Opportunity (OEO) will convey these terms to the Respondent and appointing authority, not as demands for resolution, but as an opportunity to determine if Early Resolve is possible. You may also call and discuss this with the OEO investigator.

As settlement of my complaint, I am proposing the following terms of remedy of my complaint:

1. _____

2. _____

3. _____

4. _____

___ I do not have any proposed terms of remedy at this time.

___ I do not want OEO to pursue Early Resolution.

The case will be administratively closed and the files will be kept in the Office of Equal Opportunity if all the parties agree to early resolution.

OEO Human Resources Consultant Date

Signature Date

DOT OEO Form 2-006
Revised 12/99

Attachment 15 Title VII Discrimination Complaint Process Instructions



**Washington State
Department of Transportation**

Title VII Discrimination Complaint Process

Washington State and Federal civil rights laws and Gubernatorial Executive Order EO-91-06 prohibit discrimination in state employment practices based on a person's race, color, national origin, sex, disability, creed, religion, age, marital status, sexual orientation, or disabled and Vietnam Era Veteran status.

If you believe that you have been discriminated against on any of the bases listed above, please report that allegation of discrimination to the Office of Equal Opportunity (OEO) Representative at one of the addresses listed below by completing the attached form, or call the telephone number appropriate to your area. Information will be kept in a file separate from any individual's personnel file.

If you choose to complete the form, send the form to the appropriate OEO Representative in your area (as listed below). That area's OEO Human Resources Consultant will contact you and arrange to conduct an investigation of your complaint. The OEO Human Resources Consultant will then make recommendations to resolve the alleged discriminatory issues.

If you and/or your appointing authority do not wish to accept those recommendations, the complaint will then be sent to the Equal Opportunity Committee. The committee is comprised of the Deputy Secretary of Transportation, the Olympic Service Center Human Resources Director, the Office of Equal Opportunity Director, and the executive of your work unit. The committee will make further recommendations for resolution of the complaint.

The appointing authority is required to implement the recommendations of the committee. The OEO Internal Civil Rights Branch and the Equal Opportunity Committee will attempt to resolve complaints through conciliation methods. You may also file a discrimination complaint with the Washington State Human Rights Commission, the U.S. Equal Employment Opportunity Commission, or the U.S. Department of Justice.

By law and agency policy, no person who has filed a complaint or assisted in the investigation of a complaint shall be intimidated, threatened, coerced, or in any way retaliated against.

Please forward this discrimination complaint to one of the following offices:

(Please choose either the Agency headquarters or the region office nearest you.)

Department of Transportation
Office of Equal Opportunity, Internal Civil Rights Branch
Transportation Building, Rm. 3C23, MS: 47314
310 Maple Park Avenue SE
Olympia, WA 98504-7314
(360) 705-7095

Department of Transportation
Southwest Region Office of Equal Opportunity
P.O. Box 1709, MS: S-15
4200 Main Street
Vancouver, WA 98668-1709
(360) 905-2220

Department of Transportation
Olympic Region Office of Equal Opportunity
P.O. Box 47448
5720 Capitol Boulevard, MS: 7448
Olympia, WA 98504
(360) 357-2613

Department of Transportation
South Central Region Office of Equal Opportunity
P.O. Box 12560
2809 Rudkin Road
Yakima, WA 98909-2560
(509) 575-2549

Department of Transportation
Northwest Region Office of Equal Opportunity
PO Box 330310, MS: NB82-126
15700 Dayton Avenue North
Seattle, WA 98135-97610
(206) 440-4680

Department of Transportation
Eastern Region Office of Equal Opportunity
2714 North Mayfair Street
Spokane, WA 99207-2090
(509) 324-6018

Department of Transportation
North Central Office of Equal Opportunity
P.O. Box 98
1551 North Wenatchee Avenue
Wenatchee, WA 98807
(509) 663-9644

Department of Transportation
Washington State Ferries Office of Equal Opportunity
MS: TB-32, 2911 Building
2911 Second Avenue
Seattle, WA 98121
(206) 515-3683

DOT Form 731-003 EF Instructions
Revised 8/01

Attachment 15 Title VII Discrimination Complaint Form (page 1 of 2)



Washington State
Department of Transportation

**Title VII
Discrimination Complaint**

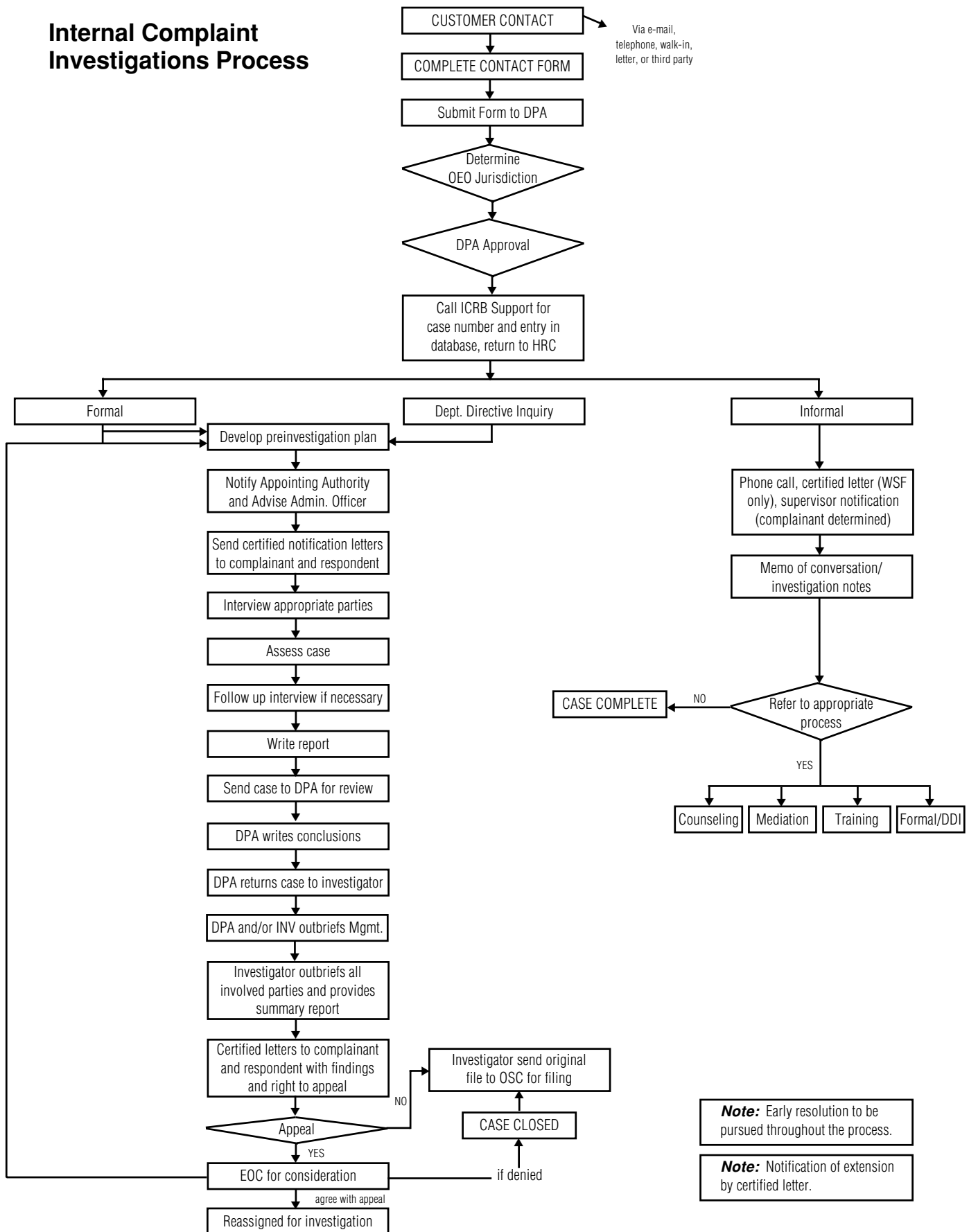
		OEO Office Use Only	
		Case #	
Name (Complainant)	Phone	Name of Person(s) or Division/Region That Discriminated Against You	
Address (Street No., P.O. Box, etc.)		Location and Position of Person (If Known)	
City, State, Zip		City, State, Zip	Date of Alleged Incident
Discrimination Because of:	<input type="checkbox"/> Race/Color <input type="checkbox"/> Age <input type="checkbox"/> Creed/Religion	<input type="checkbox"/> Disability <input type="checkbox"/> Sex (Includes Sexual Harassment)	<input type="checkbox"/> Disabled Veteran <input type="checkbox"/> Vietnam Era Veteran <input type="checkbox"/> National Origin <input type="checkbox"/> Marital Status <input type="checkbox"/> Sexual Orientation <input type="checkbox"/> Retaliation
Explain as briefly and clearly as possible what happened and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently than you. Also attach any written material pertaining to your case.			
Signature		Date	

DOT Form 731-003 EF
Revised 8/01

Please mail or return this form to the appropriate region office.

DOT Form 731-003 EF
Revised 8/01

Internal Complaint Investigations Process



Office of Equal Opportunity (OEO) investigative interviews, like other types of investigations, involve fact-gathering through interviews of persons with personal first-hand knowledge of the facts and circumstances surrounding the alleged act(s): in this case, acts of discrimination and harassment. The end result of the interviews should be written documentation summarizing the witness' personal knowledge of the facts. The interviewing report must be detailed and factual, rather than conclusive; the interview must go beyond general statements, which contain little probative material, to get to the underlying facts.

A. Preparation

Immediately before each interview, prepare and review a general guide you will be following. Notes previously taken during the investigation of which the witness could add additional insight should also be reviewed. Information taken during the interview should be organized so that witness' statements can be verified through other sources. The ability to refer to previously discovered information during the course of an interview will do much to focus the interview on matters important to the investigation.

When able to select the site for an interview, the investigator should ensure that the room is set in a businesslike, non-threatening arrangement. Try to ensure that no interruptions take place during the interview. Generally, the interview should take place in a private setting with an emphasis on a secure environment.

B. Conducting the Interview

1. Framework

It is important to establish a professional tone and try to alleviate the anxieties of those to be interviewed. An effective introductory statement will include comments on why the interview is necessary, the investigator's role as gatherer of information, and the need for confidentiality. The interview will begin with covering the information on the Interview Checklist (DOT OEO Form 2-001).

2. Question and Answer Process

While interviewing techniques depend somewhat on the investigator's style, there are some well-tried methods that have been used successfully in the past.

It is better to begin with general questions designed to allow witnesses to develop information in their own way. Ask the witness to tell what happened in his or her own words. Witnesses usually respond by telling their stories with little need of assistance. This "free flow" type of response provides a general overview of the situation and the opportunity to structure notes in a way that will permit useful follow-up questions.

In very lengthy or detailed interviews, have the witness relate on a segment of the story, then ask follow-up questions before going on.

C. Interviewing Techniques

1. Listen to the Person You Are Interviewing

The person you are interviewing should feel that the investigator is interested in what s/he is saying. Be careful not to become so involved in documenting (note-taking) the interview, that you give the impression of not listening.

2. Avoid Disruptions

Try not to interrupt the person you are interviewing in the middle of a statement. If you detect any ambiguity in their statement, make a note of it and ask them to explain it later.

3. Speak Clearly

Adjust your language to the person you are interviewing without talking down to them. Avoid the use of technical terms and try to phrase questions so that they carry the meaning you intended.

4. Be Flexible

Adjust the line of inquiry to accommodate new knowledge and information disclosed during the interview. Do not allow the interviewing process to become so fixed on a prepared set of questions that you become inflexible.

5. Avoid Antagonizing Uncooperative Respondents or Witnesses

When interviewing an uncooperative respondent or witness, avoid increasing their hostility with badgering questions. Try to plan your approach allowing the person you are interviewing to tell the story in his/her own way. Move from question to question as appropriate.

D. Selection and Analysis of Documents

During investigative interviews, complainants, respondents, and witnesses should be repeatedly asked whether they are aware of any documentary evidence that would either support what they say or discredit what another individual has said. In many cases of alleged discrimination, the best evidence will be the actual documents stating rules, procedure, or other information that formed the basis for some action relative to the work situation. The investigator must find out about such material, obtain it, organize it, and analyze it.

1. Selection

- a. General Selection Factors

Care should be taken to make note of where records were kept, by whom they were maintained, and what standard job titles, codes, etc., mean. Others who review or use these records later will need to know such information.

Always try to be reasonable with requests for records. Get only essential records. Make sure, if a request appears burdensome, that it is necessary and the person of whom it is asked is aware of the necessity for the records.

b. When to Ask for Records

Requests for particular records from witnesses should be made only after an interview has been completed. Witnesses may indicate and/or identify specific records kept in specific areas, which were not known when the investigative plan was devised. Keeping in mind that all possible like and related issues of discrimination should also be investigated, witness interviews may reveal potential areas of violation not alleged in the charge that could be corroborated or disproved by evidence secured from appropriate records.

c. Develop the Need for Records in a Logical Fashion

Develop and present requests for documentary evidence with an eye to the special circumstances of the case. Do not demand a great deal of documentary evidence before the proper framework has been set and some initial questions asked. As the interview proceeds and as individual documents are mentioned, it is appropriate to make note of the documents that will have to be examined. In this way, also, the need for such documents is obvious to the witness when they are later requested. After the initial round of questioning, the investigator's marginal notes will contain a list of relevant documents to examine. Ask for only a few of them at a time and, after examining those, request others if needed.

d. Types of Records to Examine

The records to be obtained will vary with the issues and their bases. Generally, those documents that describe in any manner the complainant's work relationship with the witness, and with WSDOT, will be valuable documentary evidence. Descriptions of general personnel policies and practices of WSDOT that relate to the alleged discriminatory situation, will be pertinent. If class issues are involved, records indicating comparative treatment of and work histories of various groups of individuals will be important; comparisons of hiring, promotions, performance appraisals, transfers, and termination, to name a few, will generally have to be made. Records from different time periods will probably be important in both individual and class action cases.

2. Analysis

Before composing the report summarizing the investigative findings, it is important to do a penetrating analysis of the data collected. The depth of analysis will depend, in some respects, on the investigator's knowledge of the elements and issues involved in the particular case. If there are any questions about the significance or importance of any piece of evidence, the Diversity Programs Administrator, OEO Director, and/or the Assistant Attorney General should be consulted.

As the investigation proceeds, the investigator will have been continually modifying the initial investigative plan. A "theory" (or, sometimes, parallel "theories") of the case will become evident as the investigator proceeds. The detailed analysis will prove out the correctness of the investigative plan and will further support an appropriate theory of the case.

To help others grasp the investigator's perception of a case, the following general considerations are important:

a. Define Terms

All terms not in general usage should be defined, especially those which distinguish between various factors of a job position.

b. Distinguish Between Fact and Opinion

The principal job of the investigator is to report evidence of facts. Distinguishing between fact, hearsay (generally, something less than personal observation), characterization, evaluation, and opinion.

c. Complete Descriptions of Work Performed

Fully describe the relevant elements of the work being performed. This is particularly important when the charging party is alleging less pay for the same work. In such a case, a comparative analysis chart of the work in question would be in order.

d. Explain the Absence of Evidence

Reviewers of an investigator's memo will fail to understand why an obviously needed piece of evidence is missing. Outlining unsuccessful efforts to obtain evidence forestalls the impression that the omission is an oversight and points the direction for additional investigative efforts.

e. Mechanics

Much of the data, especially so in a class case, will concern comparative evidence. The manner in which members of an affected class (African-Americans, Hispanics, females, etc.) are treated as compared to members of other classes (American Indians, Caucasians, males, etc.) can be shown by putting together a chart of such items as names, racial or ethnic characteristics, sex, date of hire, and salaries. For example, one chart can provide comparison data on failure to hire, promote, transfer, pay, etc.

An analysis sheet should be developed for each document. The analysis sheet would eliminate all nonessential facts and information and give only a summary. The analysis sheet should also explain how the document was obtained, what any abbreviations mean and, where possible, put information into chart form. All working papers should be included as part of the analysis and notes should be indicating what data was examined and determined not useful.

The two most common problems when dealing with documents are that they may be inaccurate because of age or they are incomplete. Accordingly, documentary evidence must be checked for currency and completeness. This may be accomplished by the use of other documents bearing on the same subject or by the use of verbal statements. Testimony by persons, such as personnel managers, who may not have actual experience with the day-to-day operations covered by the document (e.g., the actual content of a specific job tends to be based upon the documents rather than observation). For that reason, testimony of high-ranked officials may be less technical than that of persons who work the job.

The best use of documentary evidence is to compare it to evidence collected through testimony. Statistical data can be very deceiving without some sort of understanding of the meaning of the numbers. The fact that 50 percent of all employees laid off were females is not significant unless it known that only 10 percent of the total employees are females.

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This section covers numerous considerations for the investigator, which should be considered before, during, and at the conclusion of the work. This information is not all-inclusive as unplanned scenarios, needs, and circumstances can and will develop.

When in doubt about a course of action, ask for assistance from the Diversity Programs Administrator or input from peers or others involved in full-time investigative matters.

Safety First

The Washington State Department of Transportation (WSDOT) values their employees. While conducting investigative work, the investigator should be aware of the environment in which they work. Environment is defined, but not limited to: knowing what the work place atmosphere is like; background of the employees being interviewed or observed, including the complainant, witnesses, and the respondent. In addition, it is expected that depending on the circumstances, the investigator should conduct surveillance of the area they are to be working in, considering building, property layout, etc. In other words, plan ahead to the extent possible.

When dealing with a possible hostile situation, interviews should be conducted with two agency investigators present. This may not always be possible, in which case, the investigator must be cognizant of the surroundings and the individual being interviewed.

Risk of bodily harm and injury is not a requirement of the position! If the investigator has any doubts about their ability to function under a given set of circumstances, they are instructed to call for added support or consultation on the given situation.

Investigators

An “investigator” is any state employee whose duties include interviewing witnesses, obtaining documents, or otherwise gathering information that may be used in enforcement or disciplinary actions or proceeding where there is a potential for substantial civil or criminal remedies to be imposed on a person or business. The following employees are not considered investigators for the purposes of Executive Order No. 98-02: (a) Commissioned law enforcement officers whose duties consist exclusively of investigating criminal matters; (b) employees who conduct checklist inspections or review application materials for eligibility purposes; and (c) employees whose duties involve only obtaining documents or data under the supervision of an investigator.

The Purpose and Focus of the Investigation and Investigator

The purpose of an investigation is to determine the facts to support or disprove a complaint or report of an alleged incident. The investigation seeks to determine or report the truth and all the facts, both favorable and unfavorable, in order that management will have all the facts available to them, in rendering a fair decision.

The focus of the investigator is a thorough, impartial, report of facts concerning each element of the alleged complaint. Concurrently, the investigator must not brush aside or fail to report, any conflicting information or evidence that has substance.

It is essential to good management, public accountability, and ethical behavior that these standards of conduct be respected.

The Office of Equal Opportunity (OEO) has a 90-day time limitation on investigations conducted under their immediate control. The amount of time and effort utilized during an investigation is dependent upon a number of factors. Under normal circumstances, the investigation is driven by the amount of evidence, witnesses and information available to reach a conclusion about the assertions or activity being investigated. The amount of time is based on a case-by-case basis.

Public Right to Know

It is important to realize that as we perform our investigations, the public has a right to know what is going on in government. We are reminded in the Revised Code of Washington, RCW 42.17.251 Construction, which states:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

Privacy

It is important, that in the process of conducting an investigation we respect the privacy of the individual. The RCW 42.17.255 Invasion of Privacy, when states:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. See also Release of Information.

Release of Information

Public records are available for inspection and copies may be obtained with the exception of those records that are exempt by law. All questions regarding public records disclosure should be directed to the Public Records Coordinator, Records and Information Services, Administration and Support, Washington State Department of Transportation. Department of Transportation Directive D72-21, October 18, 1996, Release of Public Records, provides guidance for the release of public records.

The investigator must be aware of the fact that he/she can not guarantee an individuals rights to privacy, should they become involved in an investigative activity. This includes the witnesses, the complainant, or respondent.

Report Process

The Diversity Programs Administrator assigns all investigations. All completed reports of investigations will be submitted to the Diversity Programs Administrator for his/her review and approval.

Rights Warning

Investigative personnel with OEO are classified as Human Resource Consultants and as such are not required to read the warning of rights to persons being interviewed.

Those involved in investigative matters should be aware of the Weingarten ruling, which gives union employees the right to have representation when being interviewed. The investigator is not required to notify the employee of this right, but may do so out of courtesy.

The investigator should be aware of the limitations in RCW 9.73.030 regarding recording of private communication. An excerpt of the law follows:

RCW 9.73.030 Intercepting, recording, or divulging private communication—Consent required—Exceptions.

- (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:
 - (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication:
 - (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

Apprehension and Detention

Investigative personnel assigned to OEO do not have the police powers, therefore, they do not have the authority to apprehend or detain any person.

In addition, investigators cannot force an employee to cooperate. This includes making statements, turning over stolen resources or other documentation in their sole possession. If situations previously described are encountered, the investigator should call the Audit Office immediately for assistance.

Subpoena Power

Investigative personnel assigned to OEO do not have subpoena powers. Circumstances which require such action to obtain records et al, should be coordinated with the Washington State Office of the Attorney General representative assigned to WSDOT.

Administer Oaths

Investigative personnel do not possess notary authority and therefore do not take statements under oath.

Search and Retention of Property

Investigative personnel do have the authority to seek out and search for WSDOT property only within the facilities under WSDOT control. This understanding does not include private property on a state facility. In certain situations, legal counsel should be contacted regarding whether or not personal property may be taken as evidence. All property received, surrendered, or seized during an investigation will be recorded on a property receipt. All property received in this manner is to be secured and accounted for, until cleared for final disposition. Evidence tags/containers, and other storage materials are available through the Audit Office.

Coordination

During the course of an investigation, the investigator may develop information which indicates possible criminal activity or inappropriate civil or WSDOT administrative activity. In such event, information and evidence gathered will be presented to the Director of Audit for review and referral. Coordination may involve the Department Assistant Attorney General for his/her review and recommendations. In addition, coordination may also be made with the Offices of WSDOT Human Resources and Risk Management. Other state boards and agencies include, but are not limited to, the State Ethics Board; the State Auditor's Office, Washington State Patrol, and other local, state, or federal agencies as appropriate.

The investigator should be aware of the fact that under certain conditions involving federally funded programs, the inappropriate expenditure of funds, equated to fraud, waste, and abuse, may have to be reported to the funding agency immediately upon discovery.

Equipment and Resource Needs

OEO has statewide responsibility for investigations. When assignments are made, investigators may be required to respond in a matter of hours. The method of transportation could be on foot, state, personal, or rented/leased vehicle, airplane, or boat travel. These modes of transportation will either be arranged for the investigator or handled by the investigator personally. Normal state travel regulations apply when in travel status.

Conflict of Interest

No person shall obstruct, impede, or otherwise interfere with an investigation in which they or their subordinates have participated wholly or in part, directly, or indirectly.

No person shall involve themselves in any investigation in which they themselves have been a participant.

In the event of any conflict of interest in relation to an investigation, the investigation will be assigned to an independent and external investigative source to ensure impartiality.

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